

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 DONALD L. PATE,

12 Plaintiff,

13 v.

14 KITSAP COUNTY, a political subdivision of
15 the State of Washington, TERRY K.
16 COUSINS, INDIVIDUALLY AND IN HER
17 OFFICIAL CAPACITY AS A Kitsap County
18 Corrections Officer; and STATE OF
19 WASHINGTON,

Defendants.

NO. C07-5331 KLS

ORDER ALLOWING DISCOVERY
DEPOSITION OF KELLY BROWN

20 This matter comes before the Court on the Plaintiff's Motion to Require Kelly Brown to Testify at
21 Deposition and Trial (Dkt. #51). The Defendants filed their Response (Dkt. #57 and 58).

22 BACKGROUND

23 Mr. Pate alleges that he was injured when he fell from a top bunk bed while he was in custody at
24 the Kitsap County Jail. As part of the discovery process, The Plaintiff was made aware of the fact that an
25 inmate, Kelly Brown, filed a complaint in the Western District of Washington against correction officers
26 of the Kitsap County Jail in which he alleged that he was injured when he fell from a top bunk while in
27 custody at the Kitsap County Jail. This matter was eventually settled and as part of the settlement, Mr.
28 Brown signed a "Final Settlement Agreement and Release of Claims." (Agreement).

1 The Agreement contains the following confidentiality clause:

2 4. Confidentiality:

3 The undersigned agrees as part of the consideration for the sums payable on this
4 Agreement, that neither him nor his attorneys, agents, assignees, or successors, shall
5 reveal to anyone, including the media, other than as may be agreed to in writing
6 by defendants or as required by law, the names or identities of the parties released by,
7 the sums payable under, or any of the other terms and conditions of this Settlement
8 Agreement.

9 The Agreement appears to only protect the names and identities of the parties released, the amount
10 paid and other terms/conditions of the Agreement. There is nothing in the Settlement Agreement which
11 precludes Kelly Brown from discussing or testifying with regard to the facts surrounding his fall. The
12 Court understand's Mr. Brown's expressed concern with regard to talking with an attorney as he has
13 agreed not to disclose certain information - such as names of people he sued or the amount of money he
14 received. He is free, however, under the terms of the Settlement Agreement to discuss the facts.

15 It also appears to the undersigned, that there is sufficient similarity between Mr. Brown's incident
16 and that alleged by the Plaintiff that it would be a disservice to the plaintiff to prevent him from inquiring
17 into the facts of Mr. Brown's alleged fall from an upper bunk bed.

18 The Court understand's the Defendants' concern regarding an order requiring Mr. Brown to testify
19 at trial. It does appear that such a request is premature. However, the request to require Mr. Brown to
20 testify at deposition regarding the facts surrounding his alleged fall is appropriate.

21 The Plaintiff's Motion (Dkt. #51) is hereby **GRANTED** and Mr. Brown is ordered to testify at a
22 deposition regarding the facts surrounding his alleged fall.

23 DATED this 25th day of August, 2008.

24 
25 Karen L. Strombom
26 United States Magistrate Judge
27
28